

Circuit Court for Prince George's County
Case No. C-16-CR-23-000200

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1091

September Term, 2024

FREDERICK EARL ELLIOTT

v.

STATE OF MARYLAND

Tang,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.
Dissenting Opinion by Raker, J.

Filed: March 20, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from the conviction of Appellant, Frederick Earl Elliott (“Mr. Elliott”), following a three-day jury trial from March 11 to 13, 2024, before the Circuit Court for Prince George’s County. The jury found Mr. Elliott guilty of first and second degree assault, and use of a firearm in the commission of a crime of violence. On July 26, 2024, Mr. Elliott was sentenced to a total of twenty years of incarceration, with all but seven years suspended, and three years of supervised probation upon release. This timely appeal followed.

I. QUESTIONS PRESENTED

Mr. Elliott presents the following questions for our review, which we have rephrased:¹

- 1) Did the trial court err in denying Mr. Elliott’s motion to strike Juror 29 for cause?
- 2) Did the trial court err in refusing to ask Mr. Elliott’s proposed voir dire question?

For the reasons stated herein, we answer the two questions in the negative and affirm the judgments of the Circuit Court for Prince George’s County.

¹ Mr. Elliott phrased the questions presented as follows:

- 1) Where a prospective juror was the victim in a similar domestic violence case before the judge and, like the alleged victim here, was divorced from a police officer, and where the judge never asked whether the juror could be fair and impartial in light of her associations with the judge and law enforcement, did the judge err in denying the motion to strike the juror for cause?
- 2) Did the trial court err in refusing to ask defense counsel’s proposed voir dire question on whether the prospective jurors could refrain from considering public policy during their deliberations?

II. FACTUAL & PROCEDURAL BACKGROUND

A. The Incident on December 27, 2022

On December 27, 2022, Mr. Elliott was married to his wife of 38 years, Emberzetta Elliott (“Ms. Elliott”), and living in their home in Prince George’s County together, along with Ms. Elliott’s mother, Bernice Lester (“Ms. Lester”). On that day, Mr. Elliott tripped over some bottles on the floor in the garage and fell. Ms. Lester apologized for dropping the bottles on the floor, advising that she intended to pick them up later. Mr. Elliott became angry with Ms. Lester and told her that he wanted her out of his house.

Ms. Lester advised that she was going to call her son, James Lester, Jr. (“Mr. Lester”), who lived in Georgia, to come pick her up.² Instead, Ms. Lester decided to call her grandson, Ms. Elliott’s son, Erren Lester (“Erren”), to come get her, since he lived only ten minutes away. While Ms. Lester was on the phone with Erren, Mr. Elliott grabbed the phone out of Ms. Lester’s hand, threw it to the floor, and broke it. Mr. Elliott then went upstairs and got his service revolver.³

When Mr. Elliott came back downstairs, Ms. Lester and Ms. Elliott were making their way to Ms. Elliott’s vehicle in the garage to leave. Mr. Elliott came to the door of the garage with his revolver. At that time, Ms. Lester was sitting in the passenger seat of

² Mr. Elliott and Mr. Lester did not get along because Mr. Lester had physically attacked Mr. Elliott at a family funeral a few years back. Therefore, Mr. Elliott was “triggered” when Ms. Lester advised she was going to call Mr. Lester.

³ Mr. Elliott served in the military and then as a deputy of the Fairfax County Sheriff’s Office for 27 years. Mr. Elliott was retired at the time of the incident.

the vehicle. As Ms. Elliott got to the driver's side of the vehicle, Mr. Elliott fired three shots inside the garage.

At the time, Ms. Elliott did not know in which direction the shots were being fired, but a later police investigation revealed that there were three holes in the concrete of the garage floor. Fearing for her and her mother's safety, Ms. Elliott fled the garage in her vehicle. Ms. Elliott and Ms. Lester met Erren in a parking lot near the National Harbor and called the Prince George's County Police.

On January 17, 2023, Mr. Elliott was indicted for: attempted first-degree murder of Ms. Elliott and Ms. Lester, attempted second-degree murder of Ms. Elliott and Ms. Lester, assault first-degree on Ms. Elliott and Ms. Lester, use of a firearm in the commission of a crime of violence and a felony against Ms. Elliott and Ms. Lester, reckless endangerment for firing a gun at Ms. Elliott and Ms. Lester, and assault second-degree on Ms. Elliott and Ms. Lester.

B. Trial Proceedings, March 11–13, 2024

On the first day of trial, March 11, 2024, the State entered a nolle prosequi on the charges for attempted first-degree and second-degree murder. Then the trial court began jury selection. Following the court's voir dire questions to the prospective jurors, the court asked if the parties were satisfied with the questions, to which defense counsel responded:

[DEFENSE COUNSEL]: Yes, Your Honor. Just to put on the record, Your Honor has previously ruled that you wouldn't ask the Defendant's proposed -- on my list 22, that was you may not reach a verdict based on (indiscernible), prejudice and matters of public policy that would send a message to the community would anyone have any difficulty not considering these factors when determining

whether Mr. Elliott is not guilty or guilty of the alleged offenses. Other than that preserved for objection, I am satisfied.

THE COURT: Didn't I ask you earlier and you said no I am fine?

[DEFENSE COUNSEL]: I said -- you asked me if I wanted to make a record and I said no, just note my objection.

THE COURT: You said no. And now you are making a record?

[DEFENSE COUNSEL]: Well because I realized that it is actually - - my proposed question wasn't a part of the record, so it would be impossible to review (indiscernible.)

THE COURT: All right. We are ready.

Then the court began bringing those jurors who answered affirmatively to any question up to the bench for further inquiry. When Juror 29 approached the bench for questioning,⁴ the following interaction ensued:

THE COURT: I need to tell you all, this woman is a victim in one of my cases coming up now.

⁴ Juror 29 responded affirmatively to the following voir dire questions:

5. Does anyone know me, the Judge, or any member of my staff?

[. . .]

8. Have you, any members of your immediate family, or close personal friends ever been the victim of a crime, a witness to a crime, or arrested for, charged with, or convicted of a crime, other than a routine traffic offense?

9. Have you or any members of your family or close friends, ever been employed by a police department, Sheriffs Office, the Division of Corrections, the Office of the State's Attorney, the Department of Parole and Probation, or any other office connected with the Court system?

[. . .]

13. Mr. Elliott is charged with first-degree assault with a firearm. Does any member of the jury panel have strong feelings about this type of crime?

[. . .]

THE COURT: Twenty-nine. You wrote it, thank you. You answered 5, 8, 9 and 13. Question 5 was do you know me? Yeah. I know that you know me. All right. Question 8, was have you ever been -- I am just going to get to it. So he is charged with pointing a gun at someone in his family. And so I need to know if you can be fair and impartial in that -- in this case given what has happened to you? You had a gun pointed at you, right?

JUROR NO. 29: Yes.

THE COURT: By someone that you were involved with?

JUROR NO. 29: Yes.

THE COURT: So can you listen to this case and determine if he is guilty fairly and impartially? Or do you think -- and it is fine if you can't do it. Or do you think it is just too much, I can't do that? Be fair.

JUROR NO. 29: No, I can be fair.

THE COURT: Okay. So that was why you answered question 8, about being a victim of a crime.

JUROR NO. 29: Yes.

THE COURT: Okay. Question 9 you said maybe. Police officer --

JUROR NO. 29: I was married to a police officer for 15 years. We are now divorced. I worked for ATF for 20 years. So that was why I answered that and said maybe.

THE COURT: Oh. You worked at ATF for 20 years.

JUROR NO. 29: I did.

THE COURT: I will talk to you about that later. All right. 13 -- you answered 13, which was having strong feelings about the type of case, is that why?

JUROR NO. 29: Yes.

THE COURT: Because you were involved in that?

JUROR NO. 29: Yes.

THE COURT: Or you were a victim of that?

JUROR NO. 29: Yes.

THE COURT: All right. Is there anything about what we have discussed that would affect your ability to be fair and impartial in this case?

JUROR NO. 29: No.

[. . .]

THE COURT: Okay. Thank you very much, you can have a seat.

Defense counsel moved to strike Juror 29 for cause, and the following interaction ensued:

[DEFENSE COUNSEL]: Okay. I understand. Juror 29, I think I understood Your Honor to say, is a victim in a case specially assigned before Your Honor.

THE COURT: Yes.

[DEFENSE COUNSEL]: It sounds like I don't know anything about that case -- it sounds like it involves similar allegations.

THE COURT: They do.

[DEFENSE COUNSEL]: She is divorced from a police officer and Mr. Elliott is a police officer. The witness in this case is divorced from him now. I fully acknowledge that she said 100 percent that she can be fair but because of the similarity and the fact that the case is specially assigned to Your Honor, to me, it just seems like too dangerous a situation.

THE COURT: Why? Because it is assigned to me?

[DEFENSE COUNSEL]: Yes. Because of just the facts that she might feel that she has special obligations or (indiscernible).

THE COURT: She actually is mad that I wouldn't put the guy in jail. So that is not true. That won't happen.

[DEFENSE COUNSEL]: I mean, to me that is an indication you know, that she is here to put somebody in jail.

THE COURT: No, the guy who assaulted her with a gun but your objection is heard and noted.

The court denied defense counsel's motion to strike Juror 29 for cause and defense counsel used a peremptory challenge to strike the juror. Defense counsel used all ten of their peremptory challenges and when asked whether counsel was satisfied with the empaneled jury, defense counsel advised, "subject to our previous discussions, I am satisfied."

The jury trial began the next day on March 12, 2024. At the close of the State's case, the prosecutor entered a nolle prosequi on the charges of use of a firearm in the commission of a felony against Ms. Elliott and Ms. Lester, and reckless endangerment for firing a gun at Ms. Elliott and Ms. Lester. Defense counsel's motions for judgment of acquittal were denied. On March 13, 2024, the jury found Mr. Elliott guilty of first- and second-degree assault of Ms. Lester, and use of a firearm in the commission of a crime of violence against Ms. Lester. Mr. Elliott was found not guilty of first- and second-degree assault of Ms. Elliott, and use of a firearm in the commission of a crime of violence against Ms. Elliott.

On July 26, 2024, Mr. Elliott was sentenced to a total of twenty years of incarceration, with all but seven years suspended, and three years of supervised probation upon release.⁵ This timely appeal followed.

Additional facts will be included in the discussion as they become relevant.

III. DISCUSSION

First, we hold that the trial court did not abuse its discretion in denying Mr. Elliott's motion to strike Juror 29 for cause. Upon questioning Juror 29, the trial court made a credibility determination that Juror 29 could be fair and impartial,⁶ as she ultimately indicated, despite her experiences similar to the facts of the case at bar. Mr. Elliott failed to show actual bias on behalf of Juror 29, and rather simply relied on her similar experiences and associations. Therefore, the trial court had a rational basis for exercising its discretion as it did.

Mr. Elliott's argument that the trial court did not properly voir dire Juror 29 is not preserved for our review. Mr. Elliott failed to alert the trial court to its alleged error, eradicating the opportunity of the trial court to correct the voir dire process. Thus, we decline to address Mr. Elliott's contention that voir dire of Juror 29 was improper.

Secondly, we hold that the trial court did not abuse its discretion in refusing to ask Mr. Elliott's proposed voir dire question. The proposed question about "matters of public

⁵ The conviction for the use of a firearm in the commission of a crime of violence carries a mandatory minimum sentence of five years of incarceration. *See* Md. Code Ann., Crim. Law § 4-204(c).

⁶ Juror 29 did state that she could be fair prior to the court's asking her about her responses to the several voir dire questions to which she had answered in the affirmative.

policy” was vague, overbroad, and not likely to reveal disqualifying bias about the defendant, witnesses, or the crimes charged. Even so, the other voir dire questions asked by the trial court fairly covered the potential bias Mr. Elliott intended to ferret out—bias related to gun ownership, mental illness, and fundamental rights of the defendant. The voir dire questions posed by the court, without Mr. Elliott’s question, were sufficient to create a reasonable assurance that prejudice would be discovered if it existed.

A. Standard of Review

The manner of conducting voir dire is left to the sound discretion of the trial court. *Washington v. State*, 425 Md. 306, 313 (2012). As such, we review a trial court’s “rulings on the record of the voir dire process as a whole” for abuse of discretion. *Collins v. State*, 463 Md. 372, 391 (2019) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)). A trial court, rather than an appellate court, “has had the opportunity to hear and observe the prospective jurors, to assess their demeanor, and to make factual findings[,]” and therefore, the trial court’s conclusions are “entitled to substantial deference, unless they are the product of a voir dire that is cursory, rushed, and unduly limited.” *Washington*, 425 Md. at 313 (citing *White v. State*, 374 Md. 232, 241 (2003)) (internal quotation marks omitted).

Consequently, a trial court’s decision whether to ask a particular voir dire question is also reviewed for abuse of discretion. *Mitchell v. State*, 488 Md. 1, 16 (2024) (quoting *Lopez-Villa v. State*, 478 Md. 1, 10 (2022)). “The failure to allow questions that may show cause for disqualification is an abuse of discretion constituting reversible error.” *Id.* “In

reviewing the court’s exercise of discretion during the voir dire, the standard is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present.” *Washington*, 425 Md. at 313.

B. The Law on Jury Selection

The Sixth Amendment of the United States Constitution guarantees⁷ that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an *impartial jury*.” U.S. CONST. amend. VI (emphasis added). The right to an impartial jury requires the trial court to ensure that the members of the jury do not hold disqualifying biases. *Mitchell*, 488 Md. at 8. “The primary mechanism to identify such disqualifying biases among potential jurors is voir dire.” *Id.*

Voir dire is the “preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury.” *Voir Dire*, BLACK’S LAW DICTIONARY (12th ed. 2024). During such examination, the “trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties.” Md. Rule 4-312(e)(1). Upon request, the trial court must ask a voir dire question that is “reasonably likely to reveal specific cause for disqualification.” *Mitchell*, 488 Md. at 17 (quoting

⁷ As does Article 21 of the Maryland Constitution, Declaration of Rights. *See* MD. CONST. DECL. OF RTS., art. 21 (“That in all criminal prosecutions, every man hath a right to [. . .] a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.”).

Kazadi v. State, 467 Md. 1, 44–45 (2020)). However, a trial court “need not ask a voir dire question that is not directed at a specific cause for disqualification or is merely ‘fishing’ for information to assist in the exercise of peremptory challenges.” *Id.* at 16 (quoting *Pearson*, 437 Md. at 357) (internal quotation marks omitted).⁸

Based on a prospective juror’s responses to the voir dire questions, a party may challenge the qualification of the juror for cause and move to strike the juror from the panel. *See* Md. Rule 4-312(e)(2). The trial court may *sua sponte* excuse a juror for cause. *See Kidder v. State*, 475 Md. 113, 124 (2021) (“A prospective juror’s answers to voir dire questions may result in the trial judge excusing that individual “for cause” – an assessment that the individual, for one reason or another, might not be able to discharge the juror’s obligation to decide a case fairly and impartially for the duration of the trial.”). A juror may be disqualified for cause if: “(1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror.” *Collins*, 463 Md. at 376 (quoting *Pearson*, 437 Md. at 357). The second category is limited

⁸ While there is a pilot program for expanded voir dire taking place this year (2026), *see* Md. Rule 16-310, at the time of the writing of this opinion, Maryland still employs “limited voir dire,” which means the purpose of voir dire is to “ensure a fair and impartial jury by determining the existence of specific cause for disqualification” rather than for the facilitation of “the intelligent exercise of peremptory challenges.” *See Mitchell*, 488 Md. at 16–17.

Mr. Elliott requests that this Court expand voir dire to allow questions that facilitate the intelligent use of peremptory strikes. We agree with the State in that “these arguments are purely abstract and cannot presently be resolved in this Court,” and as such, we decline to address them.

to biases that are directly related to the defendant, the crimes charged, or the testifying witnesses in the case. *Id.* at 377.

Once jurors disqualified for cause have been eliminated from the jury panel, the court begins the process of seating a jury with the remaining qualified jurors. *Kidder*, 475 Md. at 125. “During this stage the parties may eliminate some potential jurors from service on the jury by exercising their ‘peremptory challenges,’ also called ‘peremptory strikes.’” *Id.* Each party is given a specific number of strikes depending on the potential sentence the charged crimes carry. *See* Md. Rule 4-313. A party may use a peremptory challenge to strike a juror for any reason except for a prohibited discriminatory purpose. *See generally Batson v. Kentucky*, 476 U.S. 79 (1986).

C. The Trial Court Did Not Abuse its Discretion in Denying Mr. Elliott’s Motion to Strike Juror 29 for Cause.

1. Parties’ Contentions

Mr. Elliott argues that the trial court abused its discretion by failing to inquire further into the potential bias of Juror 29. Juror 29 answered affirmatively to four of the voir dire questions, however, the court failed to inquire specifically whether Juror 29 could be fair and impartial in relation to each voir dire question. The court did not ask whether Juror 29 could be fair and impartial even though Juror 29 knew the judge and was divorced from a police officer, like Ms. Elliott. According to Mr. Elliott, the court “abandoned its duty to ferret out bias.”

Moreover, Mr. Elliott argues that the trial court abused its discretion in denying the motion to strike Juror 29 for cause, who was a victim in a similar domestic violence matter before the same judge. Based on Juror 29's similar experiences, the court should have considered this a presumption of bias, despite the juror advising she could be fair. Furthermore, prior to denying Mr. Elliott's motion to strike for cause, the court failed again to investigate further into Juror 29's potential bias, leaving the court without a basis on which to exercise discretion on the challenge for cause.

As a result of the trial court's error in failing to strike Juror 29 for cause, Mr. Elliott had to use one of his peremptory challenges to strike Juror 29, and ultimately used all ten of his peremptory challenges. Mr. Elliott argues this is a reversible error, quoting *Lockhart v. State*: "a ruling which rejected a valid challenge for cause, and this required the employment of a peremptory challenge to dismiss the objectionable talesman, would be reversible error." 145 Md. 602, 619 (1924). Therefore, Mr. Elliott asks this Court to reverse his convictions.

The State counterargues that Mr. Elliott's first contention, that the trial court did not sufficiently examine Juror 29 for potential bias, is not preserved. Following Juror 29's questioning at the bench, defense counsel did not argue that the court's inquiry was insufficient or ask (or proffer) the juror questions themselves, but rather moved to strike Juror 29 later in the jury selection process. Therefore, the State asks this Court to conclude that this issue is not preserved for appellate review. Mr. Elliott responds that the trial court

was put on notice that its questioning of Juror 29 was not sufficient when defense counsel moved to strike Juror 29 for cause, and thus this issue is preserved for appellate review.

The State further counters that the trial court soundly exercised its discretion in rejecting Mr. Elliott's motion to strike for cause. It is the trial court's discretion to credit the juror's responses and determine that the juror is eligible to serve on the jury. Although Juror 29 disclosed that she knew the judge and that she had experienced a situation factually similar to the case at hand, Juror 29 ultimately advised that she could be fair and impartial. As such, the court had a rational basis for denying Mr. Elliott's motion to strike for cause.

Alternatively, the State argues that even if the trial court did err, Mr. Elliott did not suffer any prejudice because Juror 29 was not seated on the jury panel. Mr. Elliott used a peremptory challenge to strike Juror 29. Mr. Elliott's peremptory challenge to remove Juror 29 was not impaired or denied, nor was Mr. Elliott "compelled" to use his peremptory challenge. The alleged "error merely presented a choice[.]" As such, the State asks this Court to affirm Mr. Elliott's convictions.

2. Analysis

Mr. Elliott essentially argues that the court erred in two ways with regard to Juror 29: (1) the court failed to voir dire the juror properly or to investigate further into the juror's potential bias; and (2) due to the juror's similar domestic violence experiences, the court failed to presume the juror's bias and strike the juror for cause. With regard to the first contention, we agree with the State that this argument is not preserved. When Juror

29 was questioned by the court at the bench, counsel for Mr. Elliott neither alerted the court to its alleged failure to voir dire the juror properly, nor did counsel attempt to ask (or proffer) the juror any follow-up questions themselves. Moreover, when counsel for Mr. Elliott argued for the striking of Juror 29 for cause, counsel, again, did not argue that voir dire was insufficient nor request to ask additional questions.

This Court, ordinarily, will not address issues on appeal unless those issues were raised in or decided by the trial court. *See* Md. Rule 8-131(a). The purpose of this Rule is:

(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.

Maryland State Bd. of Elections v. Libertarian Party of Maryland, 426 Md. 488, 517 (2012) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)). Mr. Elliott failed to bring his position—that voir dire of Juror 29 was insufficient—to the attention of the trial court, thereby eradicating the opportunity of the trial court to correct any errors in the voir dire process. As such, Mr. Elliott is not allowed to argue now that the court failed to properly voir dire the juror or investigate further into the juror’s potential bias.

In *Tetso v. State*, appellant argued that the trial court failed to ensure his right to an impartial jury by not further questioning or striking Juror No. 289 after she indicated her belief that the appellant should be required to prove his innocence. 205 Md. App. 334, 367 (2012). This Court held that appellant’s argument was not preserved for appellate review. *Id.* at 369. While we considered counsel’s affirmative acceptance of Juror No. 289 for impaneling and acceptance of the jury with Juror No. 289 as a member—which was not

the situation in the case *sub judice*—we also considered counsel’s failure to object that no individual questions were asked of Juror No. 289 about her belief and counsel’s failure to ask individual follow-up questions himself—which is similar to the case *sub judice*—in reaching our conclusion that appellant’s argument was not preserved. *Id.* at 370; *see also Alford v. State*, 202 Md. App. 582, 601 (2011) (“Appellant failed to object that no individual questions were asked of [the juror in question], failed to request that such questions be asked, and affirmatively accepted [the juror in question] for empanelling [*sic*] on the jury. As such, appellant has waived appellate review of this issue.”). Therefore, we decline to address Mr. Elliott’s first contention that voir dire of Juror 29 was improper.

However, because counsel for Mr. Elliott attempted to strike Juror 29 for cause, subsequently used a peremptory challenge to strike Juror No. 29, and indicated that counsel’s satisfaction with the empaneled jury was “subject to our previous discussions,” Mr. Elliott’s argument that the court erred in not striking Juror 29 for cause is preserved for appellate review.

First, Mr. Elliott argues that the trial court should have presumed Juror 29 was biased based on her experiences similar to the facts of the case. However, “[p]rospective jurors are presumed to be unbiased, and the challenging party has the burden of proof to overcome that presumption.” *Alford*, 202 Md. App. at 601; *see also Dingle v. State*, 361 Md. 1, 15 (2000) (“[B]ias on the part of prospective jurors will never be presumed, and the challenging party bears the burden of presenting facts . . . which would give rise to a showing of actual prejudice.” (citation and internal quotation marks omitted)).

Mr. Elliott had the burden to show bias and actual prejudice on behalf of Juror 29. Counsel for Mr. Elliott argued below that Juror 29 should be struck for cause because she was a victim in a case with “similar allegations[,]” “[s]he is divorced from a police officer and Mr. Elliott is a police officer[,]” and the fact that Juror 29’s case was specially assigned to the same judge presiding over Mr. Elliott’s case. Counsel for Mr. Elliott stated, “it just seems like too dangerous a situation[,]” despite also “fully acknowledg[ing] that [Juror 29] said 100 percent that she can be fair.” However, “admitting an experience or an association does not automatically disqualify the venire person.” *Dingle*, 361 Md. at 16 (citing *Davis v. State*, 333 Md. 27, 35 (1993), *overruled by Pearson v. State*, 437 Md. 350 (2014));⁹ *see also Goldstein v. State*, 220 Md. 39, 45 (1959) (“Mere acquaintance with an individual or group is an insufficient basis for challenging a prospective juror for cause.”); *Pearson*, 437 Md. at 364 (the Court stressed that “we do not hold that a prospective juror is automatically disqualified simply because the prospective juror responds affirmatively to the “strong feelings” voir dire question.”). Mr. Elliott failed to show actual bias on behalf of Juror 29, and rather relied on her similar experiences and associations. We conclude that the trial court did not err in finding that this was insufficient.

⁹ The Court in *Davis* held that the defendant was not entitled to have a voir dire question as to whether any member of the jury panel was employed as a law enforcement officer or had friends or relatives in the law enforcement field. *Davis*, 333 Md. at 36–38. The Court in *Pearson* overruled *Davis* in that, in certain cases, the trial court must ask, upon request, during voir dire whether any member of the jury pool has ever been a member of law enforcement. *Pearson*, 437 Md. at 367–69.

Mr. Elliott further argues that it is the trial judge's responsibility to determine whether a juror can be fair and impartial, however, the trial judge here "abandoned" that duty. "In determining motions to disqualify for cause, the proper focus is on the prospective juror's state of mind, and whether there is some bias, prejudice, or preconception." *Boyer v. State*, 102 Md. App. 648, 659 (1995). "Bias is a question of fact, the existence of which is a matter left to the trial judge, the focal point in the process, whose predominant function in determining juror bias involves credibility findings whose basis cannot be discerned from an appellate record." *Tetso*, 205 Md. App. at 369 (quoting *Williams v. State*, 394 Md. 98, 113 (2006)) (citations and internal quotations marks omitted). Here, the trial court made a credibility determination that Juror 29 could be fair and impartial, as she indicated she could be, despite her experiences similar to the facts of the present case.

The trial court appreciated the similarities in the case with Juror 29's prior experiences, acknowledging that Mr. Elliott was "charged with pointing a gun at someone in his family" and that Juror 29 also had a gun pointed at her by someone that she was romantically involved with. Considering the potential for bias, the trial court asked Juror 29 whether she could "listen to this case and determine if [Mr. Elliott] is guilty fairly and impartially? [. . .] Or do you think it is just too much, [you] can't do that? Be fair." Juror 29 responded that she could still be fair.

The trial court also acknowledged that Juror 29 knew the judge and inquired about her relationship with law enforcement and the fact that Juror 29 had strong feelings about

the type of case as a result of her own experience with domestic violence. Prior to concluding Juror 29's inquiry at the bench, the trial court asked, "[i]s there anything about what we have discussed that would affect your ability to be fair and impartial in this case?" Juror 29 responded in the negative. However, Mr. Elliott argues that the court "cannot rely merely on what the venire person says." We previously emphasized that:

The judge on the scene, face to face with the juror and immediately after engaging in an extended exchange with the juror, is infinitely more able than we to make such a determination. The words used are but a small part of the raw material that goes into making such a decision. There is body language. There is tone and force of voice. There is eye contact or lack thereof. There is firmness of intonation and quickness of speech versus equivocation and hesitation.

Morris, 153 Md. App. at 502. The trial court here had the opportunity to be face-to-face with Juror 29, observing her body language, tone of voice, and eye contact, and thereafter determined that Juror 29 was credible in her assertion that she could be fair, despite her similar experiences. We find no error in the trial court's finding here.

Likewise in *Morris*, Juror 505 advised that she worked for the Division of Correction, that her sister had been a victim of a crime, and initially indicated she did not know whether she could be fair. *Id.* at 498. However, ultimately, Juror 505 indicated that she could make a decision "based on the evidence without any bias." *Id.* In addition, in *Morris*, Juror 521 advised the trial court that he had "two brothers that [were] gunned down in the street" and that he might be biased against the defendants. *Id.* Like Juror 505, Juror 521's final position was "that he probably could keep an open mind until he had heard all of the evidence." *Id.*

This Court held in *Morris* with respect to these prospective jurors that there was, “to be sure, potential danger signs, but in the last analysis [the trial judge] had the discretion to go either way. There may have been a potential for bias in the air but there was not, as a matter of law, actual bias on the ground.” *Id.* at 499. We hold the same here and conclude that the trial court did not lack a rational basis for refusing to strike Juror 29 for cause. *See id.* at 503–04 (“The appellate court’s only proper inquiry is whether the trial judge had some rational basis for exercising [their] discretion as [they] did.”).

These voir dire issues present a great deal of difficulty. Jurors are often subject to greater scrutiny about difficult parts of their lives than most public servants. The trial judge was up front with counsel that she was familiar with Juror 29 because she had a case pending before her. She also asked Juror 29 directly about whether the allegations in her case might affect her ability to consider the allegations in the instant case. The trial judge inquired of her that she had had a gun pointed at her by someone with whom she was familiar. She then asked if she could be fair and impartial. The judge was well aware of Juror 29’s situation and ferreted out whether she could be fair. After that, the judge was satisfied that she could be fair. The trial court did not abuse its discretion in denying Mr. Elliott’s motion to strike Juror 29 for cause.

D. The Trial Court Did Not Abuse its Discretion in Refusing to Ask Mr. Elliott’s Proposed Voir Dire Question.

1. Parties’ Contentions

Mr. Elliott argues that the trial court erred in refusing to ask his proposed voir dire question and, as such, reversal is required. While a trial court has discretion in conducting

voir dire, it does not have the discretion to refuse to ask questions reasonably likely to reveal disqualifying bias. Mr. Elliott avers that his proposed voir dire question—“whether the jurors could refrain from considering ‘prejudice and matters of public policy that would send a message to the community’ in reaching a verdict”—was reasonably likely to reveal disqualifying bias against him. Mr. Elliott asserts that “[t]his was the type of case that might spark public policy debates on individual liberties, and counsel wanted to ask the prospective jurors whether they could put those debates aside and evaluate the evidence[.]”

Mr. Elliott further argues that the jury instructions were not sufficient to cure the court’s error during voir dire. While the jury was instructed that they “must not make decisions in this case based on personal sympathies, prejudice or known or implicit bias” and that they “must not consider public opinion[,]” jurors unable to follow this instruction were not “weeded out” during the voir dire process.

Moreover, Mr. Elliott claims that his proposed voir dire question was not fairly covered by the other voir dire questions asked of the prospective jurors. The prospective jurors were asked the crime victim question,¹⁰ law enforcement question,¹¹ strong feelings

¹⁰ “Have you, any members of your immediate family, or close personal friends ever been a victim of a crime, a witness to a crime, or arrested for, charged with, or convicted of a crime, other than a routine traffic offense?”

¹¹ “Have you or any members of your family or close friends, ever been employed by a police department, Sheriff’s Office, the Division of Corrections, the Office of the State’s Attorney, the Department of Parole and Probation, or any other office connected with the Court System?”

question,¹² whether they were against private citizens having guns for any reason, whether anyone had a mental illness or had a close friend or family member with a mental illness, and questions regarding fundamental rights.¹³ However, the prospective jurors were not asked if they could decide the case without considering these public policy matters “that would send a message to the community.”

The State counterargues that the trial court soundly exercised its discretion in declining to ask Mr. Elliott’s proposed voir dire question regarding public policy matters “that would send a message to the community.” The trial court may decline to present voir dire questions that are not aimed at a specific reason for disqualification. Here, Mr. Elliott’s proposed question¹⁴ was vague and overbroad, and did not directly address a reason for disqualification, such as a bias related to the defendant, the witnesses, or the

¹² “Mr. Elliott is charged with first-degree assault with a firearm. Does any member of the jury panel have strong feelings about this type of crime?”

¹³ The voir dire questions regarding fundamental rights included:

In every criminal prosecution the Defendant is presumed innocent unless and until the prosecution proves their case beyond a reasonable doubt. Do you draw an inference of guilt from the mere fact that Mr. Elliott has been charged?

In a criminal trial the burden is on the State to prove a [D]efendant guilty beyond a reasonable doubt. Is there anyone on the jury panel who feels that Mr. Elliott should have to prove his innocence?

In every criminal case, the Defendant has an absolute Constitutional right not to testify. Does any member of the jury panel believe that a Defendant who does not testify is more likely to be guilty?

¹⁴ Whether the jurors could refrain from considering “prejudice and matters of public policy that would send a message to the community” in reaching a verdict.

crime. *See State v. Shim*, 418 Md. 37, 45 (2011), *abrogated in part on other grounds*, *Pearson v. State*, 437 Md. 350 (2014).

Moreover, the State argues that the court’s other voir dire questions fairly covered the subject matter of Mr. Elliott’s proposed question. The other voir dire questions covered matters related to: victims of crimes, relationships with law enforcement, “strong feelings” about the type of crime, opinions on gun ownership, presumption of innocence, proof beyond a reasonable doubt, and “any reason not already mentioned” that might affect one’s ability to “sit as a juror in this case and render a fair and impartial verdict.” The trial court’s voir dire process “created a reasonable assurance that prejudice would be discovered,” which is all that is required. *See Thomas v. State*, 454 Md. 495, 508 (2017). As such, the State asks this Court to affirm.

2. Analysis

Mr. Elliott argues that the trial court erred in refusing to ask his proposed voir dire question about “matters of public policy that would send a message to the community” because the question was reasonably likely to reveal disqualifying bias and other voir dire questions did not fairly cover such potential bias. However, we agree with the State that the question posed was vague, overbroad, and not likely to reveal disqualifying bias about the either the defendant, witnesses, or the crime charged.

Mr. Elliott’s question appears in the record as: “you may not reach a verdict based on (indiscernible), prejudice and matters of public policy that would send a message to the community[.] [W]ould anyone have any difficulty not considering these factors when

determining whether Mr. Elliott is not guilty or guilty of the alleged offenses.” Counsel for Mr. Elliott did not explain or clarify what was meant by “matters of public policy” when counsel noted its objection to the court’s decision not to include the question in its voir dire. Matters of public policy could include a broad range of topics. The trial court is only required to ask questions that would be reasonably likely to reveal a bias directly related to the defendant, the crimes charged, or the witnesses testifying in the case. *See Collins*, 463 Md. at 376. Due to the vague and broad nature of Mr. Elliott’s question, we cannot conclude that it would be reasonably likely to reveal a bias related specifically to the defendant, the crimes charged, or the witnesses.

When the trial court rejected Mr. Elliott’s question it noted, “I am not going to go through all of the instructions. I know that you all keep putting more and more instructions on here.” We can only assume from the judge’s response that the question related to certain fundamental rights that the jury is instructed on after the trial has concluded, during the jury instruction phase. This theory is further supported by Mr. Elliott’s argument in his brief before this Court, that the court’s jury instruction—“You must not make decisions in this case based on personal sympathies, prejudice or known or implicit biases. You must not consider public opinion”—was an insufficient remedy to cure the error of failing to include Mr. Elliott’s proposed question in voir dire.

Citing to *Kazadi v. State*, 467 Md. 1 (2020), Mr. Elliott argues that the jury panel should have been asked whether they would be willing to follow this particular jury instruction about public opinion during the voir dire phase. However, Mr. Elliott

misinterprets the holding in *Kazadi*. The Court in *Kazadi* concluded that “on request, during voir dire, a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the long-standing fundamental principles of the presumption of innocence, the State’s burden of proof, and the defendant’s right not to testify.” *Kazadi*, 467 Md. at 35–36. The Court in *Kazadi* did not hold that all jury instructions, or even the public opinion instruction, must be referenced in the voir dire questions; only reference to the jury instructions related to the three “long-standing fundamental principles” mentioned *supra* were required. *Id.* We decline to hold here that the jury must be questioned as to whether they can comply with all of the jury instructions during the voir dire process.

Moreover, we agree with the State that the other voir dire questions asked by the court fairly covered the potential bias Mr. Elliott intended to ferret out. Only in Mr. Elliott’s brief before this Court does he argue what public policy matters he was concerned with—gun ownership, mental health, and the defendant’s fundamental rights, such as the State’s burden of proof. Even if the trial court was apprised of the public policies to which Mr. Elliott’s question referred, the court’s other voir dire questions fairly covered those topics. *See Mitchell*, 488 Md. at 28 (“The court need not ordinarily ask a particular requested question if the matter is fairly covered by the questions the court puts to the prospective jurors.”). The court asked the following voir dire questions:

13. Mr. Elliott is charged with first-degree assault with a firearm. Does any member of the jury panel have strong feelings about this type of crime?

14. Mr. Elliott lawfully owned a firearm and kept it in his home. Is any member of the jury panel who is against private citizens having guns for any reason?

15. Does any member of the jury panel have a mental illness, or have a close friend or family member with a mental illness?

There are certain legal principles that govern a criminal case, and you must follow these principles.

16. In every criminal prosecution the Defendant is presumed innocent unless and until the prosecution proves their case beyond a reasonable doubt. Do you draw an inference of guilt from the mere fact that Mr. Elliott has been charged?

17. In a criminal trial the burden is on the State to prove a defendant guilty beyond a reasonable doubt. Is there anyone on the jury panel who feels that Mr. Elliott should have to prove his innocence?

18. In every criminal case, the Defendant has an absolute Constitutional right not to testify. Does any member of the jury panel believe that a Defendant who does not testify is more likely to be guilty?

The trial court then ended with a catch-all question:

19. Do you have any reason, not already mentioned, which you believe might affect your ability to sit as a juror in this case and render a fair and impartial verdict?

Mr. Elliott's concerns for bias related to gun ownership, mental illness, and the three fundamental rights of the defendant were covered by these questions. Even so, the trial court's decision whether to ask a particular voir dire question is within the court's sound discretion and thus reviewed for abuse of discretion. *Mitchell*, 488 Md. at 16. In reviewing the court's exercise of this discretion, we ask "whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered." *Washington*, 425 Md. at 313. After review of the record, we conclude that

the voir dire questions posed by the court, without Mr. Elliott proposed question, created a reasonable assurance that prejudice would be discovered. As such, we further conclude that the trial court did not abuse its discretion in refusing to ask Mr. Elliott's proposed voir dire question.

IV. CONCLUSION

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in denying Mr. Elliott's motion to strike Juror 29 for cause, nor did the trial court abuse its discretion in refusing to ask Mr. Elliott's proposed voir dire question. As such, we affirm the judgments of the Circuit Court for Prince George's County.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

Circuit Court for Prince George's County
Case No. C-16-CR-23-000200

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1091

September Term, 2024

FREDERICK EARL ELLIOTT

v.

STATE OF MARYLAND

Tang,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: March 20, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

I respectfully dissent. I would hold that, in this case, considering all of the facts and circumstances, and the information disclosed by Juror 29 to the trial judge during voir dire, that a presumption of prejudice arose, remained un rebutted, and the trial judge abused her discretion in denying appellant's motion to strike the juror for cause.

I recognize that in Maryland, voir dire is limited, and further, that the status of a prior victim of crime alone does not create a presumption of prejudice. But here, Juror 29 was a victim of a crime very, very similar to the charged crime in the case before the trial court. Significantly, the case was currently pending in the same court. In Juror 29's pending case, she alleged her husband pointed a gun to her. In the instant case, the complaining witness alleges a similar circumstance. And to top it off, the case was specially assigned to the presiding judge in this case. In addition, although a very minor fact, the juror had worked for ATF for approximately twenty years, and her prior husband was a police officer, as is appellant. All too close for comfort. While the presence of each of these facts by themselves may not imply that Juror 29 could not be impartial, taken together, they suggest that Juror 29 could be biased, a suggestion never satisfactorily rebutted. Under circumstances such as these, the juror's self-assessment is not enough.

I recognize that the juror told the court and counsel that she could be fair and impartial. Although the juror's self-assessment is part of the equation in determining whether to strike a juror for cause, we know that jurors may not self-assess their impartiality and state of mind of bias. *Dingle v. State*, 361 Md. 1 (2000). In fact, the judge did not ask the ability to be fair and impartial question with respect to all the disclosures

made by the juror to the court. And while Juror 29 did tell the court that she could be fair and impartial, she also noted that she had “strong feelings” about this type of case. Strong feelings, alone, and the status as a prior victim of a crime, alone, are not sufficient to complain that the juror was not excused. But that is not the case here. A reversal here would not set that precedent. A reversal here recognizes a difficult assessment of human nature and what we are asking jurors to do when they are selected for jury service, i.e., to put aside their pre-conceived notions and biases, explicit or implicit. Reversing would not suggest that victims of crimes cannot serve as jurors for cases regarding that same crime. It would simply recognize that it becomes more difficult to be impartial the more one’s own life resembles the case before them.

Yes, this is a close case. And yes, the juror did not sit on the jury because defense counsel used a peremptory challenge to excuse this juror. However, defense counsel used all his peremptory challenges and as a matter of law, was entitled to have his challenge for cause sustained by the trial court and to have Juror 29 excused for cause. Review for abuse of discretion is one thing; rubber stamping is another.

It is not possible to say beyond a reasonable doubt that all the material disclosures by Juror 29 would not cause her to lack impartiality or bias. I would reverse the judgments of conviction and remand for a new trial.